

**EXECUTIVE FORCE REVIEW BOARD
OAKLAND POLICE DEPARTMENT
Officer J. Borello/H. Jimenez**

Date of Board: 9 Jul 08
Date of Report: 25 Jul 08

In accordance with Departmental General Order K-4.1, Force Review Boards, an Executive Force Review Board (EFRB) was held on 9 Jul 08 to examine the factual circumstances of the officer involved shooting of Andrew Moppin by Officers J. Borello and H. Jimenez. Moppin had fled from a vehicle he had been driving during an enforcement stop and hid behind a parked car. When confronted by OPD officers Moppin was shot by police as they believed he was arming himself. The following personnel were in attendance:

VOTING MEMBERS	
ASSIGNMENT	NAME
BOS – Chairperson	A/Deputy Chief E. Breshears
BOI	Lt. B. Medeiros
BFO	A/Deputy Chief E. Tracy

NON-VOTING MEMBERS	
ASSIGNMENT	NAME
Discipline Officer	Lt. S. Whent
Use of Force Policy	Captain E. Breshears
Patrol Procedures SME	Officer T. Shaver
Range Master SME	Officer D. Burke
Training Commander	Lt. B. Medeiros
Commander of Subject	Captain R. Orozco
Commander of Subject	Captain A. Rachal

PRESENTERS	NAME
IAD Investigator	Sergeant T. Shaver
Homicide Investigator	Sergeant L. Cruz

ADDITIONAL ATTENDEES	
BOI	Captain S. Tull
CAO	Rocio Fierro
CAO	Pelayo Llamas
Homicide	Lt. Joyner
IMT	K. Evans
IMT	R. Burgess

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BOARD RESPONSIBILITIES

The meeting was opened by reviewing the Board's responsibilities (G.O. K-4.1, FORCE REVIEW BOARDS, I., B., 1 Oct 07):

- ◆ Force Review Boards are convened to evaluate force investigations, in-custody death investigations, and any related administrative or criminal investigation. The Board shall determine whether the force used was in compliance with Departmental policies and procedures and will identify any policy revision, training, tactical or other issues related to the use of force. The Chief of Police may direct a Board to review any use of force incident.
- ◆ The Executive Force Review Board (EFRB) is convened to review any Level 1 use of force or in-custody death incident.
- ◆ The analysis, findings and conclusions of this Board are strictly administrative and intended for self-evaluation and training. Nothing related to these proceedings shall be considered or interpreted as proof of liability or wrongdoing.

CIRCUMSTANCES ATTENDING THE INCIDENT

On 31 Dec 07 Officers K. Souza and J. Mitchell observed a vehicle, containing three occupants, drive through the stop sign while eastbound on east 12th St. at 46th Ave. Souza and Mitchell attempted to stop the vehicle with the intention of citing the driver, Andrew Moppin. Moppin drove the vehicle northbound 46th Avenue at slow speeds and turned eastbound onto International Blvd. Moppin stopped just before 47th Ave. facing east, exited the vehicle and fled, running southbound on 47th Avenue. Souza and Mitchell remained with the vehicle, detaining the remaining two occupants.

Sgt. Hoffman responded to the car stop location and spoke with Souza and Mitchell. Hoffman learned of Moppin's direction of flight and advised other units via radio of the same. Hoffman located Moppin hiding behind a parked vehicle in the 1200 block of 47th Avenue. Officers Jimenez and Borello arrived to cover Hoffman. As officers attempted to arrest Moppin, Moppin exhibited body language indicative that he was armed. Jimenez and Borello, fearing for their lives, fired on Moppin and he later died of his injuries.

Moppin was uncooperative and did not follow the officer's commands. An independent witness confirmed the multiple commands given by the officers. All three officers stated that Moppin made statements that he was "taking a shit" when clearly the officers could see that was not true. Moppin stated that he did not care if he got shot because he had been shot before.

Moppin began to show his hands as directed by the officers but seemed, "defiant". Moppin suddenly turned away from the officers and quickly reached into his waistband.

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Borello stated that she felt Moppin was armed as he reached his "right hand towards his right rear waist area."

Jimenez described Moppin as reaching for the "small of his back with his right hand." Jimenez felt "certain he was retrieving a gun" and was "certain he was about to shoot me."

Hoffman described Moppin actions as "abruptly diving" his right hand towards his right side waistband. Hoffman felt that Moppin was reaching for a gun and yelled, "He's reaching!" to warn Jimenez and Borello.

This OIS occurred on New Years Eve. In Oakland, on New Years Eve, it is common for individuals to fire weapons into the sky. The officers were aware of this and took it into consideration.

Based upon the circumstances the officers believed that Moppin was recovering a weapon and both fired in self-defense. Sgt Hoffman also witnessed this however he did not fire any rounds, as he did not have his firearm out.

The Board discussed the incident and based upon the circumstances of this incident found that the rounds fired by Borello and Jimenez were reasonable and within Departmental policy.

ADEQUACY OF EQUIPMENT

The officers did not utilize handheld flashlights during their approach of Moppin. The Departmental range staff is researching the safety of holsters that would allow carrying pistols with flashlights attached.

POLICY CHANGES

None

TACTICS/TRAINING ISSUES

The following training issues were identified;

- All involved officers left cover to approach Moppin. Jimenez stated that he moved forward to handcuff Moppin once Moppin raised his hands but refused to walk towards he and Borello.

A preferred technique would have been to request and await an alternative force (bean bag, taser, K-9) option once it was determined that Moppin would not leave his cover and walk towards the officers.

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It is likely that all involved officers felt some degree of safety from Moppin's cover as they moved forward to challenge him and assess his actions. In fact, Moppin's cover was of little value to the officers.

- Although at least partially illuminated by police vehicle spotlights, some areas of darkness existed behind Moppin's cover when he fell from being shot. As Jimenez and Borello approached, neither officer utilized their individual flashlights. Borello never attempted to use her light and Jimenez had left his in his police vehicle.

Officers are trained to use their flashlights as they draw their firearms when needed due to darkness.

- Hoffman, a field supervisor, located the suspect and requested officers to assist. Once the officers arrived, Hoffman approached the suspect with his handgun holstered. Hoffman was unable to fire at the suspect when circumstances dictated because he was not prepared. Hoffman did not give directions to the officers take control of the scene coordinating the apprehension of the suspect.

Adequate time existed for Hoffman to communicate and coordinate the arrest with the officers when they arrived to cover him.

The Board discussed these training issues with Borello and Jimenez immediately following the Board.

RECOMMENDED FINDINGS

The members of the Board determined that the statements of the officers, witnesses, materials presented, and information provided by the Internal Affairs investigator were sufficient to render a finding.

The Board voted unanimously that the use of force by Officers Jimenez and Borello were **"Compliant with Policy"** in accordance with the provisions of Departmental General Order K-3 (Use of Force).

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DELIVERABLES

A recommendation for the use of holsters that accommodate flashlights. BOS 1 Sep 08

Provide training to Sgt. Hoffman. BFO 6 Aug 08

Information Bulletin BOS 10 Aug 08

Prepared By



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Wayne G. Tucker
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